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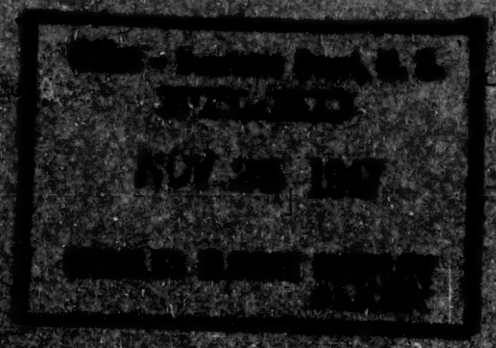

No. [redacted], 6

In the Supreme Court of the United States

OCTOBER TERM, 1947

GRAND RIVER DAM AUTHORITY, A PUBLIC CORPORATION, PETITIONER

v.

[redacted]-HYDRO, A PRIVATE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE [redacted]

INDEX

CITATIONS

767499—47——1

In the Supreme Court of the United States

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No. 379

GRAND RIVER DAM AUTHORITY, A PUBLIC CORPORATION, PETITIONER

v.

GRAND-HYDRO, A PRIVATE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIEF FOR THE UNITED STATES, AMICUS CURIAE, IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Supreme Court of Oklahoma on the first appeal (R. 88–101) is reported at 192 Okla. 693. Its opinion upon the second appeal (R. 670) is not yet reported.

JURISDICTION

The judgment of the Supreme Court of Oklahoma was entered on May 20, 1947 (R. 677) and a petition for rehearing was denied on July 1, 1947 (R. 707). The petition for a writ of certiorari was filed on October 1, 1947. The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended.

QUESTIONS PRESENTED

The petitioner brought these proceedings to condemn lands necessary to the construction of a power, irrigation, and flood control project on a non-navigable tributary of a navigable water of the United States. The Federal Power Commission had issued a license to the petitioner after finding that the proposed project would "affect the interests of interstate commerce." In the state courts, the respondent claimed, and was allowed, compensation based principally upon the value of the lands as a site for a power project of substantially the same character as the petitioner had been licensed to construct.

The questions presented are:

1. Whether a federal question is presented by the decision of the Supreme Court of Oklahoma that the respondent or its grantee "might legally apply" the property to use as a site for a power project, and, if so, whether the decision is erroneous.

2. Whether a federal question is presented by the decision of the Supreme Court of Oklahoma that the respondent has a compensable property right in the use of the river waters for the generation of electric power, and, if so, whether the decision is erroneous.

STATUTES INVOLVED

The pertinent provisions of the River and Harbor Act of 1899, c. 425, 30 Stat. 1121, 1151, 33 U. S. C.

403, and 8f of the Federal Power Act of June 10, 1920, c. 285, 41 Stat. 1063, as amended, are set out in the Appendix, *infra*, pp. 20–30.

STATEMENT

This is a proceeding by the Grand River Dam Authority (hereinafter referred to as the Authority) to condemn 1,462 acres of land owned by Grand-Hydro, including a 417-acre parcel upon which the Pensacola dam has been constructed. Both parties having excepted to the Commissioners' award in the total sum of $281,802.74 (R. 70–71), a jury trial was had resulting in a verdict for $136,250 (R. 74). Upon appeal by Grand-Hydro, the judgment entered upon this verdict was reversed. *Grand-Hydro* v. *Grand River Dam Authority*, 192 Okla. 693. Pursuant to the mandate of reversal, a new trial was had resulting in a verdict for $800,000 (R. 629). Appeal was taken by the Authority upon the overruling of its motion for new trial (R. 642). The Supreme Court of Oklahoma affirmed the award (R. 670–677). The facts which are material to the questions discussed in this brief may be summarized as follows:

Grand-Hydro was incorporated in 1929 for the purpose of developing water power and irrigation on the Grand River. However, it never commenced construction of a dam or of any other works going to the development of a hydro-electric project. It never filed with the Federal Power Commission any declaration of intention to construct a project nor any application for a permit

or license to do so and no license or permit was ever issued to Grand-Hydro (R. 111).

The Grand River Dam Authority, which is a conservation and reclamation district, was created in 1935, by the State of Oklahoma, as a governmental agency for the purpose of utilizing the waters of the Grand River for power, irrigation, flood control, and other uses. Okla. Laws 1935, c. 70, as amended, Okla. Stat. 1941, Title 82, secs. 861–881. Various steps were taken in execution of this purpose, including the making of a loan and grant agreement with the Federal Government relating to financing of the enterprise (R. 105, 459, 565, 706). The Authority proceeded to acquire the lands needed for the reservoir pool, about forty percent of them being acquired by condemnation (R. 524–525).

In December 1937, the Authority filed with the Federal Power Commission a declaration of its intention to erect the Pensacola Dam pursuant to Section 23 (b) of the Federal Power Act (Pltf.'s Exs. 4, 5; R. 456–460). In February 1938, the Commission considered the declaration of intention and found (R. 486):

> (c) The construction and operation of said project as proposed by the declarant will affect navigable stages of the Arkansas River, a navigable water of the United States, to which said Grand River is tributary;

The Commission therefore *finds* that:

> The construction and operation of said project in the manner proposed by declar-

ant will affect the interests of interstate commerce.

Thereupon, in May 1938, the Authority filed with the Commission an application for a license (Pltf.'s Ex. 1; R. 104–110). In July 1939, such a license was issued subject to various conditions which were accepted by the Authority (Pltf.'s Ex. 7; R. 462–475).

In July 1938, Grand-Hydro authorized the Authority to use the company's lands for construction purposes, compensation to be later determined (R. 141). Attempts to agree on compensation having failed, this proceeding was instituted in February 1939 (R. 32–52).

At the trial, Grand-Hydro claimed a large value for the 417-acre tract because of possible use for dam-site purposes, the estimates of the four witnesses ranging from $750,000 to $1,000,000 (R. 324, 346, 361–362, 379). These appraisals were made without regard to whether or not Grand-Hydro possessed a license to build the dam (R. 319, 333–334, 361, 371, 378). The Authority objected to these appraisals and moved to strike them on the ground, amongst others, that Grand-Hydro had not filed a declaration of intention under the Federal Power Act, had not obtained a license under that Act, nor had the Commission found that the proposed structure would not affect interests of interstate commerce (R. 321–322, 345, 361–362, 387–389). The question was again raised at the close of the trial by plaintiff's

requested instructions, Nos. 26, 33–38 (R. 604, 607–613), all of which were denied, and by exceptions to the giving of defendant's requested instruction No. 10 (R. 623–624) in which the court told the jury: "'You should put out of consideration entirely the fact that Grand-Hydro was not possessed of a license from the Federal Power Commission authorizing it to appropriate the waters of the Grand River to beneficial use."

The Authority appealed to the Supreme Court of Oklahoma and a brief *amicus curiae* was filed by the United States directed solely to the issue relating to the federal power license. On May 20, 1947, the judgment was affirmed (R. 670–677). As to the federal power license, the court stated (R. 676):

> Although the Authority had been granted a license by the Federal Power Commission granting it the exclusive right to use the 417 acre tract as a dam site, it could not thereby take private property without just compensation. Nor was the issuance of such license intended to have that effect because the plain provision requires the licensee to pay all damages to the property of others caused by the construction, operation and maintenance of the project. In addition, the Federal Power Commission based its authority to take jurisdiction upon a finding of fact that the construction and operation of the project "as proposed by the declarant will affect navigable stages of

the Arkansas River, a navigable water of the United States, to which said Grand River is tributary." The Commission would have no authority whatever if the dam site were used for the construction of such a dam that the navigability of the Arkansas River would not be affected.

ARGUMENT

I

THE INTEREST OF THE UNITED STATES AND THE IMPORTANCE OF THE QUESTIONS PRESENTED

The interest of the United States in this litigation is threefold:

1. The decision of the court below, if allowed to stand, will undoubtedly be relied upon in suits brought by the United States to condemn lands useful as a site for a project which would generate electric power from the waters of a nonnavigable stream. In *United States ex rel. T. V. A.* v. *Powelson*, 319 U. S. 266, 273, the United States contended that where the flow of the nonnavigable river has a direct and immediate effect on navigable waters, and where, therefore, its control over the nonnavigable stream is as plenary as over navigable waters, compensation for the loss of any supposed power value is no more permissible than in the case of a navigable stream. Cf. *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53. Since this Court found it unnecessary to pass upon that contention in the

Powelson case, the question is still an open one and it is of continuing importance.

2. The decision of the Supreme Court of Oklahoma requires petitioner, an agency of the State government and a licensee under the Federal Power Act, to pay $800,000 for some 1,462 acres of land which it needed to construct and operate its Pensacola water power, irrigation and flood control project on the Grand River in Oklahoma [1] (*supra*, p. 3). That amount is almost six times the $136,250 previously adjudged to be the value of the land for purposes other than hydro-electric power development (R. 74). Thus the present judgment adds $663,750 to the burden of capitalization which this public project must carry. And this is only the beginning, for the determination of the price to be paid for additional lands awaits the outcome of this proceeding (R. 682).

The $663,750 and other similar amounts will be paid to a landowner which otherwise could have realized such sums, if at all, only if it or its grantee should construct a hydro-electric project similar in size and capacity to the project constructed by the Authority. It does not appear that the respondent had any plans for such con-

[1] The Federal Power Commission treated the Grand River as a nonnavigable stream when it granted a license to the Authority in 1939 and it has been so treated throughout this case. Whether the Grand River might be navigable under the rule of *United States* v. *Appalachian Power Co.*, 311 U. S. 377, has not become an issue in this case.

struction, or had complied with applicable federal laws relating to such developments. In fact, a license having been issued to the Authority in July 1939, no one else could thereafter have obtained such federal authority for construction of a project at the same site, and since the lands in question were taken on January 19, 1940, respondent was at that time foreclosed from complying with the federal laws (Pltf.'s Ex. 7; R. 462–475, 484). Even before July 1939, the Commission could not have issued a license to Grand-Hydro or any private person in preference to the Authority, after it was created in 1935, since the Act gives priority to state agencies. Section 7 of the Federal Power Act, Appendix, *infra*, pp. 22–23. The project whose earnings are, of necessity, capitalized to arrive at the claimed value (R. 383) is, therefore, a hypothetical plant projected for that purpose alone.

If the decision below were to stand as a precedent for an award based on hypothetical power plant value, the power-consuming public and the Government of the United States might be seriously prejudiced. Under the Federal Power Act, the "net investment" of a licensee, based on its "actual legitimate original cost" (Section 3 (13) of the Federal Power Act, Appendix, *infra*, p. 21), has significance for rate-making purposes (Section 20, Appendix, *infra*, pp. 27–29), and as a measure of the amount the United States, or a

successor licensee (Section 15, Appendix, *infra*, p. 25) is required to pay a licensee whose project is taken over at the expiration of its 50-year license (Section 14, Appendix, *infra*, pp. 23–24).

A judicial decree in a condemnation proceeding like that here entered, compelling a licensee to pay for assumed power site value as a cost of lands which are indispensable to the development, might well stand as an obstacle to the disallowance, by the Federal Power Commission, of such hypothetical value (cf. *Alabama Power Co.* v. *Federal Power Commission*, 136 F. 2d 929, 931 (C. C. A. 5)). See *infra*, pp. 16–17. Its allowance would mean higher rates to consumers and greater cost to the United States.

3. The United States holds approximately $14,000,000 worth of the Authority's revenue bonds, the construction of the present project having been largely financed by the Federal Government under a loan and grant agreement (R. 105, 459, 565, 706). See the Act of July 31, 1946, Pub. L. No. 573, 79th Cong., 2d Sess., providing, *inter alia*, for the refinancing of the loan at a lower rate of interest.

This may not be an exhaustive list of the situations in which a licensee's "actual legitimate original cost" may have significance. See, *e. g.*, Section 16, Appendix, *infra*, pp. 25–26, under which the Pensacola project here involved was taken over during the war. See Executive Order No. 8944, Nov. 19, 1941; see Act of July 31, 1946, c. 710, 60 Stat. 743, authorizing return of the project.

II

THE COURT BELOW HAS ERRONEOUSLY DECIDED ONE OR MORE FEDERAL QUESTIONS

A. *The "legality" of power plant use by the respondent or its grantee.*—The Supreme Court of Oklahoma held that the principal element of value in arriving at the compensation to be paid by the petitioner for the taking of respondent's lands was their value for the purpose of generating electric power from the waters of the Grand River (R. 675). Such a use, it held, in order to be considered in measuring compensation, must be a lawful one, for the court announced that it would follow as the "law of the case," its prior decision in the same proceeding where it said (R. 91):

> The condemnee is ordinarily entitled to compensation measured not only by the value of the land for the use to which he has applied it, but the value thereof for all possible purposes, present and prospective, to which he or his ordinary grantee might *legally* apply the same. [Italics supplied.]

In dealing with the Authority's contentions as to the respondent's lack of a Federal Power Commission license,[*] the court below seems to have looked to Federal law to determine the legality of the use of the land for power development. That being so, its decision falls within the rule that

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[*] The court's treatment of these contentions is quoted, *supra*, pp. 6–7.

when a state court decision rests upon the construction of a federal statute, a federal question is presented even though the federal problem is not the ultimate issue in the case but is only collaterally involved. See *Nutt* v. *Knut*, 200 U. S. 12, 19; *Caldarola* v. *Eckert*, 332 U. S. 155; *Standard Oil Co.* v. *Johnson*, 316 U. S. 481, 483.

The court below may be thought, however, not to have passed upon federal law as such but as having simply adopted the federal law as state law. If its opinion be thus analyzed, the state court's application of that adopted law would not present a federal question, for the meaning of "just compensation," as used in the Oklahoma constitution is, of course, a purely local question. *Miller's Executors* v. *Swann*, 150 U. S. 132; see *State Tax Comm'n* v. *Van Cott*, 306 U. S. 511, 514. But see *infra*, pp. 14.

If, with respect to the "legality" of the use, the court below did decide a federal question, we submit that that decision was erroneous because, under both the Federal Power Act and the River and Harbor Act of 1899, the respondent could not legally have put his land to power project use. As has been noted, the respondent has at no time filed with the Federal Power Commission a declaration of intention to construct a power project. Section 23 (b) of the Federal Power Act requires such a filing with respect to every project on any nonnavigable stream over which Congress has

jurisdiction under the Commerce Clause, and bans construction except under a Federal license if the Commission finds that the "interests of interstate or foreign commerce" would be affected by the proposed construction. Appendix, *infra*, pp. 29–30. See *Georgia Power Co.* v. *Federal Power Commission*, 152 F. 2d 908 (C. C. A. 5). Since the hypothetical project, upon the basis of which the respondent was awarded the major part of its compensation, was substantially the same as that which the Federal Power Commission had licensed the Authority to construct,[4] there can be no question that construction of such a project by the respondent would be illegal.

Section 10 of the River and Harbor Act of 1899 leads to the same conclusion. Appendix, *infra*, p. 20. That Section prohibits the creation of any obstruction to navigable waters of the United States. There was no determination, and no evidence from which a determination could be made,[5] that the respondent could develop power without creating an obstruction to downstream navigable waters of the United States in viola-

[4] The trial court excluded all reference to the necessity for compliance with federal requirements, even though attention was specifically directed to the fact that the structure contemplated by Grand-Hydro's witnesses would affect commerce (R. 322). One of Grand-Hydro's witnesses was asked "is your valuation of this dam site based upon its being used for a project similar to the one the Grand River Dam Authority has constructed there?" He replied. (R. 335) "Not entirely similar, but with regard to its use it would be similar."

[5] See *supra*, note 4.

tion of that Section unless Federal authorization was obtained. See *United States* v. *Rio Grande Dam & Irrigation Co.*, 174 U. S. 690; *United States* v. *Bellingham Bay Boom Co.*, 176 U. S. 211.

B. *The respondent had no compensable property interest in the use of the Grand River waters for the generation of power.*—There can be no doubt that the court below recognized a right of property in the use of the Grand River waters for power project purposes. And it is equally clear that in holding that there was such an interest, the court below decided a federal question if, under the Constitution and laws of the United States, there is room for the contention that there can be no such private property. We submit that the court below erred in awarding compensation for an interest which is not property within the meaning of the Federal law applicable to the situation at bar.

Repeated decisions have firmly established that under the River and Harbor Act of 1899 and statutes having similar effect, power site value due to the strategic location of lands for development of the power in the falling water of a navigable river of the United States is in no sense private property or capable of private ownership. *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53, 66, 69; *United States* v. *Willow River Power Company*, 324 U. S. 499; *Washington Water Power Co.* v. *United States*, 135 F. 2d 541 (C. C.

A. 9), certiorari denied, 320 U. S. 747; *Continental Land Co. v. United States*, 88 F. 2d 104 (C. C. A. 9), certiorari denied, 302 U. S. 715; see *United States v. Appalachian Electric Power Company*, 311 U. S. 377, 423, 427–428.

The rationale of the *Chandler-Dunbar* decision and of others since announced appears from the statement of the Court that "Whatever substantial private property rights exist in the flow of the stream must come from some right which that company has to construct and maintain such works in the river, such as dams, walls, dykes, etc., essential to the utilization of the power of the stream for commercial purposes. * * * Congress has of course excluded, until it changes the law, every such construction as a hindrance to its plans and purposes for the betterment of navigation." 229 U. S. at 69, 71–72. That rationale permits of no distinction of the instant case on the grounds that nonnavigable waters are involved and that the condemnor is not the United States but one of its licensees. For in this case, just as in *Chandler-Dunbar* and the others, the respondent has no right to construct and maintain those structures which are "essential to the utilization of the power of the stream for commercial purposes." See *supra*, pp. 12–14.

The Federal Power Act prevents the existence of private ownership of power site values on non-

navigable waters by providing for regulation of power developments on streams or parts thereof "over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States" "other than those defined * * * as navigable waters," just as that Act, together with Section 10 of the River and Harbor Act of 1899 (Appendix, *infra*, p. 20) prevents private ownership of power site values on navigable waters of the United States (Section 23 (b), Appendix, *infra*, pp. 29–30). (As to the applicability of the Power Act to nonnavigable waters, see *Appalachian Electric Power Co.* v. *Smith*, 4 F. Supp. 6, 16 (W. D. Va.), reversed on other grounds, 67 F. 2d 451 (C. C. A. 4), certiorari denied, 291 U. S. 674; cf. *United States* v. *Appalachian Electric Power Co.*, 311 U. S. 377, 426.) For, under this federal regulation, there can be no prospect of earnings from the development of water power, except as the required federal authorization for a power project shall be obtainable. And power site value, which is essentially a capitalization of such prospective revenues, can have no existence except as federal authorization upon terms warranting such capitalization can be anticipated. But the Federal Power Act expressly prohibits capitalization of the license which is the *sine qua non* of the prospective earnings, and prohibits capitalization of prospective earnings of licensed projects. Section 14 of the

Act (Appendix, *infra*, pp. 23–24), provides that "net investment" for the rate, recapture, and other purposes referred to above (*supra*, pp. 9–10)—

> shall not *include or be affected* * * * *by the license* or by good will, going value, *or prospective revenues*; nor shall the values allowed for water rights,[6] rights-of-way, lands, or interest in lands be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee * * *. [Italics supplied.]

The allowance in a condemnation proceeding of a value for land which is based principally upon power site value of the land due to the possible use thereof for a hypothetical power development would simply bring into net investment by indirection, in the guise of cost of land, what Congress prohibited in Section 14.

The provision in Section 10 (c) of the Federal Power Act, Appendix, *infra*, p. 23, does not, as the court below seemed to think (R. 676), mean that, despite its lack of federal right, Grand-Hydro was entitled to recover power site value. That Section provides that "Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto,

[6] I. e., water rights under state irrigation laws or other state laws not regulating development of power, saved from supersedure by Section 27. See *infra*, p. 18.

constructed under the license, and in no event shall the United States be liable therefor." Since the Section does not define the term "property of others," it is not determinative that power development value must be paid for. The decision in *Henry Ford and Son, Inc.* v. *Little Falls Fibre Co.*, 280 U. S. 369, holding that a licensee operating a power project under the Federal Power Act was liable under Section 10 (e) for damages to upper power plants caused by a licensed project, is not controlling, because the right under federal law of the upper power developers to maintain their structures in the stream was not questioned in that case or considered by this Court or any of the lower courts. In the instant case there is a challenge to the right of respondent to construct the hypothetical power project upon which the land values rest, without appropriate federal authority. Furthermore, in *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, 328 U. S. 152, 176, this Court held that Section 27 of the Federal Power Act, Appendix, *infra*, p. 30, saves from supersedure only certain state laws not directed to the regulation of power development, citing with approval an earlier district court case, *Alabama Power Co.* v. *Gulf Power Co.*, 283 Fed. 606 (M. D. Ala.), which held to the same effect.

As the Fifth Circuit Court of Appeals has indicated in *Georgia Power Co.* v. *Federal Power*

Commission, 152 F. 2d 908, the power exercised by the Commission with respect to non-navigable waters has the same constitutional basis as its authority over navigable waters. And in *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53, it was the exercise of just such control with reference to navigable waters which resulted in the denial of compensation for power-site value.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1947.

APPENDIX

Section 10 of the River and Harbor Act of March 3, 1899, c. 425, 30 Stat. 1121, 1151, 33 U. S. C. 403, provides:

> The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States, is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same.

The Federal Power Act of June 10, 1920, c. 285, 41 Stat. 1063, as amended, provides:

> Section 3 (13), 16 U. S. C. 796 (13):
>
> The words defined in this section shall have the following meanings for purposes of this Act, to wit:
>
> * * * * *

"net investment" in a project means the actual legitimate original cost thereof as defined and interpreted in the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission," plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term "cost" shall include, insofar as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by States, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall insofar as applicable be published and promulgated as a part of the rules and regulations of the Commission;

* * * * *

Section 4 (g), 16 U. S. C. 797 (g):

The commission is hereby authorized and empowered—

* * * * * *

Upon its own motion to order an investigation of any occupancy of, or evidenced intention to occupy, for the purpose of developing electric power, public lands, reservations, or streams or other bodies of water

over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States by any person, corporation, State, or municipality and to issue such order as it may find appropriate, expedient, and in the public interest to conserve and utilize the navigation and water-power resources of the region.

* * * * *

Section 7, 16 U. S. C. 800:

(a) In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

(b) Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and

estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development.

Section 10 (c), 16 U. S. C. 803 (c):

That the licensee shall maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.

* * * * *

Section 14, 16 U. S. C. 807:

Upon not less than two years' notice in writing from the Commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the

licensee then valuable and serviceable in the development, transmission, or distribution of power and which is then dependent for its usefulness upon the continuance of the license, together with any lock or locks of other aids to navigation, constructed at the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken, and shall assume all contracts entered into by the licensee with the approval of the Commission. The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be determined by the Commission after notice and opportunity for hearing. Such net investment shall not include or be affected by the value of any lands, rights-of-way, or other property of the United States licensed by the Commission under this Act, by the license or by good will, going value, or prospective revenues; nor shall the values allowed for water rights, rights-of-way, lands, or interest in lands be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee: *Provided*, That the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon payment of just compensation is hereby expressly reserved.

* * * * *

Section 15, 16 U. S. C. 808:

That if the United States does not, at the exploration of the original license, exercise its right to take over, maintain, and operate any project or projects of the licensee, as provided in section 14 hereof, the commission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the original license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof: *Provided,* That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the original licensee, upon reasonable terms, then the commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the original license until the property is taken over or a new license is issued as aforesaid.

Section 16, 16 U. S. C. 809:

That when in the opinion of the President of the United States, evidenced by a written order addressed to the holder of any license hereunder, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any project, or part thereof, constructed, maintained, or operated under said license, for the purpose of manufacturing nitrates, explosives, or munitions of

war, or for any other purpose involving the safety of the United States, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the party or parties entitled thereto; and in the event that the United States shall exercise such right it shall pay to the party or parties entitled thereto just and fair compensation for the use of said property as may be fixed by the commission upon the basis of a reasonable profit in time of peace, and the cost of restoring said property to as good condition as existed at the time of the taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the licensee.

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Section 19, 16 U. S. C. 812:

That as a condition of the license, every licensee hereunder which is a public-service corporation, or a person, association, or corporation owning or operating any project and developing, transmitting, or distributing power for sale or use in public service, shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged. That in case of the development, transmission, or distribution, or use in public service of power by any licensee hereunder or by its customer engaged in public service within a State which

has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by such licensee or by its customer engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of such license that jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control: *Provided*, That the jurisdiction of the commission shall cease and determine as to each specific matter of regulation and control prescribed in this section as soon as the State shall have provided a commission or other authority for the regulation and control of that specific matter.

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Section 20, 16 U. S. C. 813:

That when said power or any part thereof shall enter into interstate or foreign commerce the rates charged and the service rendered by any such licensee, or by any subsidiary corporation, the stock of which is owned or controlled directly or indirectly by such licensee, or by any person, corporation, or association purchasing power from such licensee for sale and distribution or use in public service shall be reasonable, nondiscriminatory, and just to the customer and all unreasonable discriminatory and unjust rates or services are hereby prohibited and declared to be unlawful; and whenever any of the States

directly concerned has not provided a commission or other authority to enforce the requirements of this section within such State or to regulate and control the amount and character of securities to be issued by any of such parties or such States are unable to agree through their properly constituted authorities on the services to be rendered or on the rates or charges of payment therefor, or on the amount or character of securities to be issued by any of said parties, jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved, upon the request of any State concerned, or upon its own initiative to enforce the provisions of this section, to regulate and control so much of the services rendered, and of the rates and charges of payment therefor as constitute interstate or foreign commerce and to regulate the issuance of securities by the parties included within this section, and securities issued by the licensee subject to such regulations shall be allowed only for the bona fide purpose of financing and conducting the business of such licensee.

The administration of the provisions of this section, so far as applicable, shall be according to the procedure and practice in fixing and regulating the rates, charges, and practices of railroad companies as provided in the Act to regulate commerce, approved February 4, 1887, as amended, and that the parties subject to such regulation shall have the same rights of hearing, defense, and review as said companies in such cases.

In any valuation of the property of any licensee hereunder for purposes of rate making, no value shall be claimed by the licensee or allowed by the commission for any project or projects under license in

excess of the value or values prescribed in section 14 hereof for the purposes of purchase by the United States, but there shall be included the cost to such licensee of the construction of the lock or locks or other aids of navigation and all other capital expenditures required by the United States, and no value shall be claimed or allowed for the rights granted by the commission or by this Act.

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Section 23 (b) 16 U. S. C. 817:

It shall be unlawful for any person, State, or municipality, for the purpose of developing electric power, to construct, operate, or maintain any dam, water conduit, reservoir, power house, or other works incidental thereto across, along, or in any of the navigable waters of the United States, or upon any part of the public lands or reservations of the United States (including the Territories), or utilize the surplus water or water power from any Government dam, except under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to this Act. Any person, association, corporation, State, or municipality intending to construct a dam or other project works across, along, over, or in any stream or part thereof, other than those defined herein as navigable waters, and over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States shall before such construction file declaration of such intention with the Commission, whereupon the Commission shall cause immediate investigation of such proposed con-

struction to be made, and if upon investigation it shall find that the interests of interstate or foreign commerce would be affected by such proposed construction, such person, association, corporation, State, or municipality shall not construct, maintain, or operate such dam or other project works until it shall have applied for and shall have received a license under the provisions of this Act. If the Commission shall not so find, and if no public lands or reservations are affected, permission is hereby granted to construct such dam or other project works in such stream upon compliance with State laws.

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Section 27, 16 U. S. C. 821:

That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein.

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